

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Expedited Approval of Tariff)
Change to Impose a Fuel Price)
Adjustment.)
Transmittal No. 17-1105.)
_____)

DOCKET NO. 05-0302

DECISION AND ORDER NO. 22154

Filed Dec. 1, 2005
At 4:15 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2005 DEC -5 A 8:15

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K. Higashi

OF THE STATE OF HAWAII

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DECISION AND ORDER

By this Decision and Order, the commission denies YOUNG BROTHERS, LIMITED's ("YB" or "Applicant") request for expedited commission approval to amend its tariff to impose a fuel price adjustment for its water carrier transportation service, as proposed in Transmittal No. 17-1105, filed on November 14, 2005.

I.

Background

A.

Procedural History

YB is a Hawaii corporation and an authorized common carrier by water under the Hawaii Water Carrier Law,¹ codified in Hawaii Revised Statutes ("HRS") Chapter 271G. It is currently certified by the commission to transport property by barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai in the State of Hawaii ("State"). YB's regulated water carrier

¹HRS § 271G-1 (1993).

service is provided under YB Local Freight Tariff No. 5-A ("Tariff No. 5-A"), which contains YB's commodity rates, sailing schedules for all of YB's port destinations, and general rules applicable to all shipments provided under the tariff.

Throughout the 1990's YB filed for and received multiple rate increases for the provision of its water transportation service. On December 20, 1996, YB filed its most recent notice of intent to seek a general rate increase. The commission authorized YB to increase its rates by approximately 3.71% effective October 10, 1997.² The commission also authorized YB to earn a rate of return of 11.06% on the average depreciated rate base of \$31,117,628 ("Authorized Rate of Return").

On October 1, 2001, YB filed an Application for Allowance of Rate Flexibility Within a Reasonable Zone in Docket No. 01-0255 to establish a practice under which YB could continue to earn a "just and reasonable" return on its average rate base without having to continually go through a general rate case proceeding ("Docket No. 01-0255"). On December 14, 2001, YB and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") (the parties to Docket No. 01-0255), filed a Stipulation regarding YB's October 1, 2001 application agreeing, among other things, to use a zone with a maximum annual increase of 5.5% and a maximum annual decrease of 10% over a twelve (12)-month period ("YB Zone") under a three (3) year pilot program (to end on December 20, 2004) ("2001 Stipulation"). On December 20, 2001, the commission issued

²Decision and Order No. 16008, filed on October 10, 1997, in Docket No. 96-0483.

Decision and Order No. 19115 approving the 2001 Stipulation, with specific modifications and clarifications of the procedures related to the continuation of the YB Zone after the initial three (3)-year period.

On December 6, 2004, YB and the Consumer Advocate filed another Stipulation to continue the YB Zone for three (3) additional years (until December 20, 2007) ("2004 Stipulation"). The commission approved the 2004 Stipulation in Decision and Order No. 21768, filed on April 22, 2005.

The following year, on June 1, 2005, YB filed an Application for Approval of 2005 Rate Increase Pursuant to Decision and Order No. 21768 seeking a 5.5% across the board increase through Transmittal No. 16-0605 ("2005 Zone Application"). On July 18, 2005, the commission issued Order No. 21926 approving YB's 5.5% increase.

B.

Fuel Price Adjustment Application

On November 14, 2005, YB filed an Application for Expedited Approval of Tariff Change to Impose a Fuel Price Adjustment by Transmittal No. 17-1105 ("Fuel Price Adjustment Application") pursuant to HRS §§ 271G-16 and 271G-17 and Hawaii Administrative Rules ("HAR") §§ 6-61-94 and 6-65-5.³ In its Fuel Price Adjustment Application, YB seeks approval to amend its tariff to impose a fuel price adjustment, which will allow YB to automatically increase or decrease its rates to reflect the

³Transmittal No. 17-1105 was served on the Consumer Advocate, an *ex officio* party to this docket pursuant to HRS § 269-51.

changes in YB's costs for diesel fuel above or below levels included in YB's base rates on 30 days' notice (without a rate proceeding) with prices reconciled quarterly ("Fuel Price Adjustment"). YB further requests that it be allowed to impose the Fuel Price Adjustment on less than forty-five (45) days' notice effective December 1, 2005, pursuant to HRS § 271G-17(b) and HAR § 6-65-41.

In the alternative, if the commission does not approve the proposed Fuel Price Adjustment on less than 45 days' notice, YB requests that it be allowed to update and supplement the record with October 2005 financial data or with the most current available data for the purpose of recalculating the initial Fuel Price Adjustment, and permit its Fuel Price Adjustment to take effect upon the requisite forty-five (45) days' notice.

In the event that YB's Fuel Price Adjustment Application is suspended and an evidentiary hearing is ordered, Applicant requests that the evidentiary hearing be scheduled at the earliest convenient date.

1.

Fuel Price Adjustment

As noted above, YB proposes a Fuel Price Adjustment to allow it to automatically increase or decrease its rates to reflect changes in YB's costs for diesel fuel above or below levels included in YB's base rates upon thirty days' notice.⁴ YB contends that it needs to "pass on the difference in cost to

⁴See Fuel Price Adjustment Application at 3.

shippers between the cost of diesel stated in the 2005 Zone Application (i.e., the Base Price of Diesel Fuel [\$1.737 per gallons]) and the actual current cost of diesel fuel" to reach the rate of return contemplated in the 2005 Zone Application, as approved.⁵ Accordingly, YB proposes that the commission grant it the authority to impose: (a) an initial Fuel Price Adjustment, effective as of December 1, 2005; and (b) "subsequent Fuel Price Adjustments every three (3) months thereafter if the trailing average of the delivered cost of diesel fuel to YB (for the three-month period immediately following the period upon which the preceding Fuel Price Adjustment was based, defined above and referenced hereafter as the ('Relevant Three-Month Period') is above or below the Base Price of Diesel Fuel."⁶

In describing its Fuel Price Adjustment proposal, YB explains that:

Both the initial Fuel Price Adjustment and subsequent Fuel Price Adjustments will be stated as a percentage equal to the difference between the **"Current Fuel Cost Per Each \$1.00 of Revenue"** and the **"Base Fuel Cost Per Each \$1.00 of Revenue."** That is, (a) if the Current Fuel Cost Per Each \$1.00 of Revenue exceeds the Base Fuel Cost Per Each \$1.00 of Revenue, the Fuel Price Adjustment shall be made at the rate of a 1 percent increase in the amount of the commodity rate for each \$0.01 increase (or fractions thereof) in YB's fuel cost per each \$1.00 of revenue and (b) if the Current Fuel Cost Per Each \$1.00 of Revenues is less than the Base Fuel Cost Per Each \$1.00 of Revenue generated, the Fuel Price Adjustment shall be made at the rate of a 1 percent decrease in the amount of the commodity rate for each \$0.01 decrease (or

⁵See Fuel Price Adjustment Application at 32.

⁶See id. at 33.

fractions thereof) in YB's fuel cost per each \$1.00 of revenue.⁷

YB states that the "Base Fuel Cost Per Each \$1.00 of Revenue" is the "quotient of the number of gallons of diesel fuel projected to be consumed by YB for the 2005 Test Year divided by YB's total intra-state revenue for the 2005 Test Year, multiplied by the Base Price of Diesel Fuel to YB of \$1.737 per gallon (delivered)."⁸ Moreover, YB clarified that:

With respect to the **initial** Fuel Price Adjustment, the "Current Fuel Cost per Each \$1.00 of Revenue" shall be the quotient of the number of gallons of diesel fuel consumed by YB to generate intra-state revenue for September 2005 divided by YB's actual total intra-state revenue for September 2005, multiplied by September 2005's average of the delivered cost of diesel fuel. With respect to **subsequent** Fuel Price Adjustments (reviewed and made quarterly), the "Current Fuel Cost Per Each \$1.00 of Revenue" shall be the quotient of the number of gallons of diesel fuel consumed by YB to generate intra-state revenue during the Relevant Three-Month Period divided by YB's actual total intra-state revenue for the Relevant Three-Month Period, multiplied by the Relevant Three-Month Period's trailing average of the delivered cost of diesel fuel.

Fuel Price Adjustment Application at 34 (internal citations omitted).

YB states that its Fuel Price Adjustment Application is consistent with and will further the purposes of Docket No. 01-0255 (which established the YB Zone) by: (1) streamlining the regulatory process for the ultimate benefit of YB's ratepayers by eliminating regulatory lag for fuel cost adjustments and by reducing costs associated with the regulatory process; (2)

⁷See Fuel Price Adjustment Application at 33.

⁸See id. at 34.

improving the level of service to customers by providing YB greater rate flexibility, within acceptable limits, to be more responsive to customers' needs and meet increasing competition primarily from interstate carriers not regulated by the commission under the Hawaii Water Carrier Act; and (3) ensuring that there is reasonable protection of the public interest.

In particular, YB contends that a fuel surcharge is needed to achieve Docket No. 01-0255's purpose of eliminating regulatory lag for fuel cost adjustments (which cannot be achieved solely through the YB Zone) and that its Fuel Price Adjustment is a better mechanism to achieve this purpose since it would focus on one specific cost item. YB also states that Matson Navigation Company, Inc. ("Matson") and Horizon Lines, LLC ("Horizon"), interstate carriers that operate in the State without commission oversight, both have the ability to increase rates through a zone of reasonableness and to respond to fluctuating fuel markets through imposition of fuel surcharges. YB notes that both Matson and Horizon have recently imposed similar fuel surcharges and that YB is now seeking to more effectively compete with these interstate carriers on a level "playing field" through its Fuel Price Adjustment Application. Furthermore, among other things, YB represents that its proposed Fuel Price Adjustment will ultimately benefit its customers by reducing its financial risk, which lowers its cost of capital and increases its access to capital, as it undertakes long-term plans to incrementally replace its maturing fleet of tugs and barges.

YB represents that a Fuel Price Adjustment is necessary because the recent "rapid and unpredictable" increase in the cost of fuel has resulted in fuel becoming an "unacceptably" high proportion of YB's costs. For instance, YB contends that in its 2005 Zone Application, it anticipated fuel cost to be \$1.737 per gallon; however, YB's actual average cost for diesel fuel in September 2005 was \$2.029. YB emphasized that "this rapid and unpredicted rise in the cost of fuel was not covered by YB's 5.5 percent rate increase arising from the 2005 Zone Application[,] and that the cost increase has eliminated the cost recovery achieved in its 2005 Zone Application.'

YB also represents that the Fuel Price Adjustment will be "revenue neutral" and will not result in a windfall to YB since its non-fuel related expenses have not decreased. It represents that YB's quarterly filing, as proposed in YB-Ex-12, will confirm the "revenue neutral" nature of its proposed Fuel Price Adjustment on a going forward basis, and that the commission and the Consumer Advocate can verify that the mechanism is no more than a pass-through of YB's increased fuel costs.

2.

Expedited Approval

YB contends that approval of its Fuel Price Adjustment on less than 45 days' notice is warranted since "[t]he rapid and unpredicted cost of fuel has resulted in fuel becoming an unacceptably high proportion of YB's costs" and as such, YB has a

⁹See Fuel Price Adjustment Application at 25 and 29.

"critical need for immediate authority to impose a Fuel Price Adjustment."¹⁰ YB further represents that fuel costs at present amounts and percentages of operating costs that YB is experiencing should not be allowed to continue since it "presents a serious risk of substantial damage to YB and its financial integrity."¹¹

C.

Consumer Advocate's Protest

On November 17, 2005, the Consumer Advocate filed a Protest and Request for Waiver of the Requirement that the Protest be Filed Not Less than 15 Days Before the Effective Date ("Consumer Advocate's Protest"). In its protest, the Consumer Advocate recommended denial of the Fuel Price Adjustment Application and a waiver of HAR § 6-61-60. According to the Consumer Advocate: (1) YB's proposal constitutes single-issue ratemaking, which the commission has historically denied, with certain exceptions; (2) YB failed to demonstrate that current fuel prices require implementation of a Fuel Price Adjustment; and (3) YB's financial documents fail to clearly demonstrate that YB's inability to achieve its Authorized Rate of Return is primarily due to an increase in the price of fuel. The Consumer Advocate also contends that YB failed to demonstrate why it should be allowed to implement the Fuel Price Adjustment on less than 45 days' notice.

¹⁰See Fuel Price Adjustment Application at 41.

¹¹See id. at 42.

According to the Consumer Advocate, YB's proposed Fuel Price Adjustment mechanism constitutes single-issue ratemaking because it allows YB to only recover price changes in a single cost item (i.e., fuel) without consideration of necessary changes to and impacts on other revenue requirement components. For instance, the Consumer Advocate notes that while YB contends that imposition of a Fuel Price Adjustment would reduce its financial risk, lower cost, and increase availability to capital, YB does not propose to reflect the expected lower financial risk and cost effects on its Authorized Rate of Return of 11.06%. Additionally, the Consumer Advocate contends that YB did not consider the fuel saving impacts resulting from operational efficiencies programs that it will be implementing.

In addition, the Consumer Advocate argues that the commission has historically disallowed requests that are akin to single-issue ratemaking absent a showing of need under extenuating circumstances. The Consumer Advocate contends that the commission has "allowed single-issue ratemaking through the use of automatic adjustment clauses only in unusual circumstances such as when a utility demonstrated that the magnitude of the impact on the utility's revenue requirement warranted such relief."¹² The Consumer Advocate maintains that YB failed to demonstrate that recent changes in the price of fuel is of such magnitude that it warrants approval of its proposed Fuel Price Adjustment. YB has not demonstrated that given its percentage of fuel costs to total operating expenses it lacks the opportunity to earn its Authorized

¹²See Consumer Advocate's Protest at 5-6.

Rate of Return.¹³ The Consumer Advocate, moreover, asserts that YB's "2005 year-to-date percentage of fuel in relation to the total operating expense for YB is significantly less than, and pales in comparison to, the percentages" of fuel and purchase power to total operating and maintenance costs experienced by electric utilities providing service in the State, which ranges from 59.92% to 83.96%, and the percentage of electricity costs to total operating costs of certain private water and wastewater companies that range from 25.37% to 64.94%.¹⁴ Moreover, the Consumer Advocate notes that while the percentage of fuel to YB's total operating cost increased noticeably in 2005, this figure was lower and fairly stable from 2000 through 2004, and that YB experienced moderate increases in 2003 and 2004.

In addition, the Consumer Advocate asserts the following additional criticisms and concerns of YB's proposed Fuel Price Adjustment:

1. YB has not adequately explained why it did not seek to implement a Fuel Price Adjustment in prior general rate proceedings and has not shown that the recent increases in the price of diesel fuel will continue in the future and are not an aberration resulting from extenuating and unexpected circumstances outside of anyone's control.

¹³YB's percentage of fuel costs in relation to operating expense is considered confidential by YB and was filed under seal pursuant to Protective Order No. 22143, filed on November 30, 2005.

¹⁴See Consumer Advocate's Protest at 9.

2. The 11.06% Authorized Rate of Return, which YB bases its Fuel Price Adjustment proposal on, was granted in 1997 and may no longer be reasonable under current market conditions and capital costs. Moreover, the 11.06% Authorized Rate of Return is not reasonable if YB's representation that the proposed Fuel Price Adjustment mechanism will lower its financial risk and capital costs is accepted.
3. A review of YB's "2005 year-to-date financial information that was provided to support the instant tariff proposal indicates that activities other than the recent fuel price increases may be the cause of the most significant increases in operating expenses."¹⁵
4. YB's claim that the YB Zone was primarily proposed and authorized by the commission to provide YB with an opportunity to recover changes in costs such as the price of fuel is misleading.
5. YB's contention that its Fuel Price Adjustment Application does not constitute a general rate increase is erroneous since: (a) YB's proposal will result in an increase in the general level of rates or charges so that YB has a better opportunity to earn its 11.06% Authorized Rate of Return; and (b) YB is proposing to establish a "new" rate recovery mechanism.
6. YB's claim that the proposed Fuel Price Adjustment is revenue neutral may be incorrect since the allocation of

¹⁵ See Consumer Advocate's Protest at 7.

fuel costs will be based on revenue dollars between interstate and intrastate operations and YB has not made clear whether fuel efficiencies have been properly considered.

Based on the foregoing, the Consumer Advocate concludes that YB's Fuel Price Adjustment Application is not in the public interest. It states that allowing YB to "implement the proposed fuel price adjustment mechanism will cause YB's customers to pay higher rates to transport goods between the Hawaiian islands, effective December 1, 2005, without a demonstration of the need for, or reasonableness of such proposal."¹⁶ Accordingly, the Consumer Advocate objects to the approval of YB's Fuel Price Adjustment Application and recommends that the commission deny YB's tariff transmittal.

In the Consumer Advocate's Protest, the Consumer Advocate also requests that the commission waive the HAR § 6-61-60 requirement that protests be filed not less than fifteen (15) days before the effective date of the tariff change application ("Consumer Advocate's Waiver Request"). The Consumer Advocate states that it received its copy of YB's application at 4:08 p.m., on Monday, November 14, 2005; however, it was unable to meet the HAR § 6-61-60 requirement due to various docketed matters in which the Consumer Advocate was involved in, including an Order to Show Cause hearing scheduled for Tuesday, November 15, 2005. Accordingly, the Consumer Advocate was unable to file its protest until November 17, 2005.

¹⁶See Consumer Advocate's Protest at 2.

D.

YB's Reply

YB filed its Reply to the Consumer Advocate's Protest on November 23, 2005 ("YB's Reply"). YB states that it does not object to the Consumer Advocate's Waiver Request. YB notes, however, that HAR § 6-65-41 (not HAR § 6-61-60), which gives a party three (3) working days to file a protest to an application made on short notice, is applicable, and that, as a result, the Consumer Advocate's Protest filed within the prescribed three (3)-day filing period, was timely.

YB objects, however, to the Consumer Advocate's recommendation that the commission deny YB's proposed Fuel Price Adjustment. YB contends that the Consumer Advocate's characterization of YB's tariff filing as single-issue ratemaking and the application of an "extenuating circumstances" test in evaluating YB's proposal are contrary to the commission's long-standing practice of authorizing fuel price adjustments or fuel surcharges under tariff filings or non-ratemaking proceedings. YB, moreover, contends that it has demonstrated that its proposed Fuel Price Adjustment is just and reasonable in accordance with statutory requirements.

YB argues that it and other carriers and utilities have sought and obtained commission approval of automatic adjustments to or surcharges on their respective rates to account for the fluctuating nature of fuel prices. In support, YB points to a fuel surcharge request it filed in 1980, which the commission

approved on short notice, subject to further investigation in Decision and Order 6315, filed on July 30, 1980, in Docket No. 4066 ("Docket No. 4066"). YB later decided to fold in the approved 2.7% fuel surcharge into its proposed base rates in a general rate case proceeding that it initiated in November 1980.

In addition to the fuel surcharge granted to YB by the commission in Docket No. 4066, YB claims that the commission authorized new automatic fuel adjustment clauses in various non-ratemaking proceedings for certain energy utilities and for the motor carrier industry. See In re Hawaii Elec. Light Co., Docket No. 7148, Decision and Order No. 12633, filed on September 28, 1993; In re Hawaiian Elec. Co., Docket No. 6052, Decision and Order No. 9806, filed on June 27, 1988; In re Western Motor Tariff Bureau, Docket No. 4061, Decision and Order No. 6305, filed on July 24, 1980. In contrast, YB claims that the cases cited in the Consumer Advocate's Protest do not involve requests for fuel recovery.

YB also contends that its proposed Fuel Price Adjustment Application is not a general rate increase because "[t]his request is made for fuel cost recovery purposes, not purely revenue purposes."¹⁷ Moreover, YB states that the reports it proposes to submit will safeguard against any revenue windfalls. Additionally, YB counters that the Consumer Advocate's concerns regarding proper allocation of costs between interstate and intrastate service to ensure that the proposed filing is revenue neutral is puzzling since YB's cost of service model, approved by

¹⁷See YB's Reply at 8.

the commission in Decision and Order No. 20454 in Docket No. 01-0255, documents that costs are allocated fairly between YB's interstate and intrastate operation. Moreover, YB asserts that its proposed Fuel Price Adjustment is designed and "intended to avoid revenue windfalls and will give YB's customers the benefit of fuel savings achieved through conservation, efficiency, or other measures" since it is structured on fuel costs per gallons consumed, and is designed to reflect both increases and decreases in diesel fuel that YB pays.¹⁸

In addition, YB claims that it has demonstrated a need for the Fuel Price Adjustment. According to YB, the proper test in evaluating its proposed Fuel Price Adjustment is whether YB's proposal is just and reasonable as required under HRS § 271G-16(b). YB claims to have demonstrated that need by relevant and substantial financial data documenting YB's expenses. According to YB, the Fuel Price Adjustment Application was made in the context of its 2005 Zone Application and demonstrated the impacts of rising fuel costs on its 2005 Test Year rate element projections. Moreover, it argues that the Consumer Advocate's comparison of YB's fuel costs, as a percentage of total operating costs, to costs for electric and water and wastewater utilities is unfair since purchased power is included in the calculations for electric companies and similarly electricity expense for water and wastewater utilities may not be exclusively comprised of a fuel component. YB states that in Docket No. 4066 the commission approved its fuel surcharge based on YB's representation that fuel

¹⁸See YB's Reply at 12-13.

costs were approximately 10% of its total operating costs. It notes that YB's year-to-date fuel costs, as a percentage of total operating costs in 2005 is "substantially" higher than 10%.

II.

Discussion

A.

Consumer Advocate's Waiver Request

In its protest, the Consumer Advocate requested a waiver of HAR § 6-61-60, which states:

Any person may protest or oppose any proposed tariff change filed by a water carrier by notifying the commission in writing and serving the protest on the water carrier or its designated agent not less than fifteen days before the effective date of the proposed tariff change. The water carrier may file its reply to the protest not less than five days before the effective date of the proposed tariff change with proof of service of a copy of its reply on the protester.

HAR § 6-61-60.

However, HAR § 6-65-41(c), which governs tariff filings on less than forty-five (45) days' notice, states:

The commission shall not take action on the application for at least three working days after service is made under subsection (b) so that parties can file protests or objections.

HAR § 6-65-41(c).

HAR § 6-65-41(c) clearly provides a party filing a protest or objection to a tariff on short notice with three (3) days to submit its filing. The Consumer Advocate's Protest was filed on November 17, 2005, three (3) days after YB filed its

November 14, 2005 Fuel Price Adjustment Application.¹⁹ Thus, the commission finds that the Consumer Advocate's Waiver Request is unnecessary.

B.

Expedited Approval

YB seeks expedited approval of its Fuel Price Adjustment Application pursuant to HRS § 271G-17(b) and HAR § 6-65-41.

HRS § 271G-17(b) states, in relevant part:

The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

HRS § 271G-17(b).

HAR § 6-65-41(a) also states, in relevant part:

The commission may grant a request for a change or addition to tariffs on less than forty-five days' notice if it finds that an emergency exists and the applicant carrier has proven that any delay in implementing the change or addition will result in substantial damage to the carrier or its shipper. The carrier shall include in its application a full statement of the need for implementing the change or addition on less than forty-five days' notice.

HAR § 6-65-41 (emphasis added).

For commission approval of a change or addition to a carrier's tariff with less than forty-five (45)-days' notice under HAR § 6-65-41, the commission must find that an "emergency"

¹⁹YB does not object to the Consumer Advocate's Waiver Request. See YB's Reply at 1.

exists and that the applicant has proven that "any delay in implementing the tariff change or addition will result in substantial damage" to the applicant. YB's request for commission approval of its proposed Fuel Price Adjustment fails to meet this standard.

YB claims that the commission should impose a Fuel Price Adjustment on short notice based on its assertion that fuel cost as a percentage of its total operational cost has reached an "unacceptable" level. Beyond that, YB makes assertions that its need for the proposed Fuel Price Adjustment is "critical" and that if current conditions continue it faces a "serious risk of substantial damage to YB and its financial integrity"²⁰

Despite the rise in fuel prices, YB, however, is still projected to earn a return that is noticeably higher than the 5.67% return YB projected for the year before obtaining relief under its 2005 Zone Application.²¹ While this is less than the 9.18% return contemplated in its 2005 Zone Application, it hardly constitutes an "emergency."²² Indeed, YB's claim of possible "substantial damage" in the future cannot constitute an emergency especially given what appears to be a recent decline in diesel prices. Accordingly, the commission does not find that YB has

²⁰See Transmittal No. 17-1105 at 42.

²¹YB's projected rate of return is considered confidential by YB and was filed under seal pursuant to Protective Order No. 22143, filed on November 30, 2005. See YB's Reply at 30 (confidential).

²²See Transmittal No. 17-1105 at 30 (confidential).

proven that an emergency exists, or that any delay would result in substantial damage.

In its Reply, YB contends that the commission should approve its current proposed Fuel Price Adjustment, on short notice, since the commission approved, subject to further investigation, its fuel surcharge request, on short notice, in a 1980 proceeding.²³ The commission disagrees. HAR chapter 6-65 (including HAR § 6-65-41, which provides for short notice tariff filings) was approved and adopted in September 1999. More importantly, the regulatory environment and standards have clearly evolved since 1980 and YB has failed to meet these standards. YB's current proposed Fuel Price Adjustment must be evaluated under the current regulatory standards and in light of the regulatory environment and conditions that presently exist. As such, the commission concludes that YB's request for commission approval of its proposed Fuel Price Adjustment, on short notice, should be denied.

C.

Fuel Price Adjustment

YB seeks commission approval of its Fuel Price Adjustment Application pursuant to HRS §§ 271G-16 and 271G-17 and HAR §§ 6-61-94 and 6-65-5.

²³See Decision and Order No. 6315, filed on July 30, 1980, in Docket No. 4066.

HRS § 271G-17 states, in relevant part:

(a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. . . . the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); .

. . . .

HRS § 271G-17 (emphasis added).

HAR § 6-65-5 also states, in relevant part:

No change may be made in any rate, fare, charge, classification, or sailing or in any rule, regulation, or practice affecting the rate, fare, charge, classification, or sailing, except upon forty-five days' notice of the proposed change filed with the commission and published and posted at the water carrier's principal place of business and at each of the carrier's stations and offices; provided that:

(1) A change in a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted as provided above; and

(2) Any change or addition to a tariff, approved on short notice filing as provided in 6-65-41, may be made on less than forty-five days' notice.

HAR § 6-65-5 (emphasis added). While the commission's rules contemplate the use of a fuel surcharge, they only provide for adjustment of an existing fuel surcharge after only thirty days' notice, which does not apply to the imposition of a new fuel surcharge. Imposition of an entirely new fuel surcharge would constitute single-issue ratemaking that is impermissible absent an exceptional case where the impact on revenue requirements is the result of events beyond the control of the utility and is of such magnitude as to warrant relief.

1.

The Fuel Price Adjustment Constitutes Single-Issue Ratemaking

"Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case." See Pennsylvania Indus. Energy Coalition v. Pennsylvania, Public Utility Comm'n, 653 A.2d 1336, 1350 (Pa. Commw. Ct. 1995). As fuel costs are normally considered in a rate case,²⁴ the consideration of fuel prices alone outside the context of a rate case would constitute single-issue ratemaking.

Single-issue rate cases are frowned upon in utility ratemaking because the objective of ratemaking is not to ensure recovery dollar for dollar of every expenditure made by a utility, but rather to ensure that the company has a reasonable

²⁴See Interim Decision and Order No. 22050, filed on September 27, 2005, in Docket No. 04-0113 (approving the parties' stipulation regarding HECO's Energy Cost Adjustment Clause, on an interim basis, during HECO's current general rate increase proceeding).

opportunity to earn a reasonable overall return on investments dedicated to public utility functions. In order to make this ultimate determination, it is necessary to match ordinary and necessary expenses with income from the same period, and determine whether the net income is sufficient to provide a reasonable return on allowable rate base. Single-issue rate cases do not allow for this determination of overall net income. They focus on the change in a single expense (or revenue) item since the last rate case, ignoring completely what changes may have taken place in the other factors of net income. To consider some costs in isolation may allow a company to essentially "raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area." See State ex rel Midwest Gas Users' Assn v. Public Service Comm'n, 976 S.W.2d 470, 480 (Mo. Ct. App. 1998).

YB argues that its proposed Fuel Price Adjustment does not constitute single-issue ratemaking because YB presented its request in relation to its 2005 Zone Application rate components. While a discussion regarding the effect of its proposed Fuel Price Adjustment on Test Year 2005 rate components may be somewhat enlightening, such a discussion is insufficient because YB is proposing to adjust only one of numerous rate components through its proposed Fuel Price Adjustment without a full evaluation of the necessary changes to or impacts on essential rate case elements such as revenue requirements and rate of return, which can only be fully and appropriately evaluated and scrutinized in a proceeding involving general rate review. For

instance, as the Consumer Advocate points out, YB's Authorized Rate of Return of 11.06% may not be reasonable based on YB's "representation that the proposed [F]uel [P]rice [A]djustment mechanism will lower [YB's] financial risk and capital costs."²⁵ Moreover, YB's 2005 Zone Application cannot be characterized as a general rate case proceeding, rather it was an abbreviated filing made under the YB Zone, allowing YB to increase rates within a prescribed threshold without going through the rigors of a general rate proceeding.

YB also argues that its Fuel Price Adjustment is not single-issue ratemaking because YB and other carriers and utilities under the commission's jurisdiction have in the past obtained approval for automatic adjustments or surcharges to account for fluctuating fuel costs outside of rate case proceedings.

YB emphasizes that the commission approved, subject to further investigation, its 1980 surcharge request filed in Docket No. 4066, on short notice, outside of a general rate case proceeding. YB also cites the following dockets as examples of other instances where the commission approved new automatic fuel adjustment clauses in non-ratemaking proceedings: In re Hawaii Elec. Light Co., Docket No. 7148, Decision and Order No. 12633, filed on September 28, 1993 ("Docket No. 7148"); In re Hawaiian Elec. Co., Docket No. 6052, Decision and Order No. 9806, filed on June 27, 1988 ("Docket No. 6052"); In re Western Motor Tariff

²⁵ See Consumer Advocate's Protest at 7.

Bureau, Docket No. 4061, Decision and Order No. 6305, filed on July 24, 1980 ("Docket No. 4061").

None of those cases, however, analyzed the issue of whether imposition of an entirely new fuel adjustment clause constituted single-issue ratemaking. Indeed, Docket Nos. 7148 and 6052 did not even involve new automatic fuel adjustments. In both those proceedings, the commission approved fuel purchase and fuel transportation contracts for electric utilities and allowed them to include these and related costs into their respective pre-existing fuel adjustment clauses and did not authorize the establishment of new fuel adjustment clauses. While the commission appears to have allowed the establishment of a new fuel surcharge in Docket No. 4061 for WMTB member carriers, on short notice, as the commission authorized for YB in Docket No. 4066, the commission is not now categorically bound by decisions made twenty-five (25) years ago in Docket Nos. 4061 and 4066. The regulatory environment has evolved since 1980. For instance, in 1980, YB was not operating under rate flexibility as it currently does under the YB Zone. Additionally, while prior commission decisions can guide future decisions, the commission is not bound by them. In the commission's administration and supervision of public utilities and carriers operating under HRS Chapters 269, 271, and 271G, the commission is entrusted to make sound and reasoned decisions based on the specific and unique facts and circumstances of each application or proceeding, and the records developed therein. Moreover, the commission must make its determinations applying current regulatory requirements,

in light of the current regulatory environment and established policies in a non-discriminatory manner.

Furthermore, as early as 1987, the commission articulated its concerns with single-issue ratemaking stating that changes in rates "based solely on changes in individual revenue or cost items are not allowed with the exception of rate changes made pursuant to an automatic fuel adjustment clause previously approved by the commission."²⁶

In a HECO rate case proceeding in 1994, the commission denied HECO's request to establish a purchased power non-fuel adjustment clause to recover or pass through purchase power cost changes. In that decision, the commission further articulated that "[s]ingle-issue ratemaking does not account for potential changes in other cost items that may affect the relationship between costs and the returns earned by the company."²⁷ The commission also stated that "HECO describes no unusual circumstances that would warrant the need for a permanent adjustment clause[.]"²⁸

In a 2002 proceeding regarding Hawaii American Water Company, Inc.'s treatment of certain costs, the commission further articulated the following:

The commission has considered single-issue ratemaking and allowed special accounting ratemaking treatment only in exceptional cases

²⁶See Decision and Order No. 9312, filed on June 30, 1987, in Docket No. 5740 at 6 (emphasis added).

²⁷See Decision and Order No. 13704, filed on December 28, 1994, in Docket No. 7700 ("Docket No. 7700") at 14.

²⁸Id. at 15-16 (emphasis added).

where the impact on revenue requirements is the result of events beyond the control of the utility and is of such magnitude as to warrant relief. Accordingly, we have required reductions in utility rates as a result of steep reductions in utility income tax rates resulting from the Tax Reform Act of 1986, and have allowed the deferral and recovery of the costs of restoring facilities necessitated by unprecedented devastation caused by Hurricane Iniki.²⁹

The commission's policy regarding single-issue ratemaking is clear. Single-issue ratemaking is to be avoided, barring exceptional cases where impact on revenue requirements is beyond the control of the utility or carrier and is of such magnitude warranting relief. This policy cannot be applied arbitrarily or capriciously, it must be applied to all types of applications and issues before the commission including applications concerning automatic fuel price adjustment or fuel surcharge requests. Thus, the commission finds that YB's proposed Fuel Price Adjustment constitutes single-issue ratemaking that should be denied absent a showing of exceptional circumstances where the impact on revenue requirements is the result of events beyond the control of the utility and is of such magnitude as to warrant relief.

²⁹See Decision and Order No. 19177, filed on January 31, 2002, in Docket No. 01-0252 at 4 (footnotes deleted and emphasis added).

YB Has Not Demonstrated That Its Fuel Price
Adjustment Is an Exceptional Case Where the Impact on
Revenue Requirements Is the Result of Events Beyond
YB's Control and Is of Such Magnitude as to Warrant Relief

Given that imposition of a new fuel price adjustment would constitute single-issue ratemaking, YB must demonstrate that its need for a Fuel Price Adjustment is an exceptional case where the impact on revenue requirements is the result of events beyond YB's control and is of sufficient magnitude that it warrants relief.

YB claims that its proposed Fuel Price Adjustment is needed to offset recent rising prices in diesel fuel since it is affecting YB's ability to achieve the rate of return authorized in its 2005 Zone Application. This assertion, however, is not of sufficient magnitude to warrant relief. As noted above, while less than the 9.18% return contemplated in its 2005 Zone Application, YB is still projected to earn a return considerably higher than the 5.67% return YB projected for 2005 before obtaining relief under its 2005 Zone Application.³⁰ Additionally, as YB noted in its Reply, diesel fuel prices are essentially market-driven. A comparison of average diesel fuel prices for the State as of November 22, 2005, published at the AAA website, which YB cited in YB-EX-3 to its Reply, with average diesel fuel prices for the State as of November 26, 2005, from the same source indicates that diesel fuel prices for the State are generally decreasing. Accordingly, YB should begin to experience a

³⁰See Fuel Price Adjustment Application at 30 (confidential).

decrease, or at least a leveling off, of its diesel fuel costs going forward in November and in the upcoming months. Also, in 2006, YB will have the opportunity to readjust its rates through a proceeding under its YB Zone, which would include its fuel cost projections for Test Year 2006 if it determines that such a proceeding is necessary. Moreover, should YB determine that overall rates should be increased beyond the YB Zone, it can file a general rate increase application with the commission.

In the exercise of the commission's powers to "prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto," the commission must balance various factors including the public interest and the public's need for "adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service."³¹ Approving YB's proposed new Fuel Price Adjustment without a full investigation of the impacts of YB's proposal on other cost items and revenue requirement components and rate elements such as rate of return in a general rate case proceeding, in this instance, would not be in the public interest. The public should have the opportunity to comment on YB's proposal, and the full impact of the proposal should be carefully considered in the context of a full rate proceeding.

³¹See HRS § 271G-16(e).

The commission, however, is not unconcerned about the effect of rising diesel prices on YB's business. By this decision, the commission does not pass judgment on the sufficiency of the data provided by YB in support of its application. And, should YB initiate a rate proceeding, the commission is inclined to take notice and incorporate into the rate proceeding the filings in this docket.

To provide YB with as many options as possible given the commission's decision, the commission does not initiate an investigation into YB's rates by this order. The commission leaves it to YB to determine whether to file for an increase under its YB Zone, or whether to file a general rate application with the commission.

III.

Orders


THE COMMISSION ORDERS:

1. YB's request for commission approval to implement its proposed Fuel Price Adjustment, on short notice, effective December 1, 2005, pursuant to HRS § 271G-17(b) and HAR § 6-61-41, as provided in YB's Transmittal No. 17-1105, is denied.


2. YB's request for commission approval to allow it to implement its proposed Fuel Price Adjustment upon the requisite 45 days' notice and submit additional financial data in support of YB's request, as provided in YB's Transmittal No. 17-1105, is denied.

DONE at Honolulu, Hawaii DEC - 1 2005.

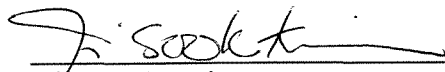
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel
YB Transmittal 17-1105.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22154 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: DEC - 1 2005